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ABSTRACT

The annotated bibliography cites 21 articles and legal documents relating to the effects of English-only policies on the quality and availability of health care for immigrants and limited English-speakers. Article topics include eviction of illegal immigrants from nursing homes, health care for undocumented aliens, welfare reform and care for disabled illegal immigrants, state policy and language minority rights, English-only laws and access to information, availability of sign language,and deaf interpretation, attitudes toward patient autonomy, health care and civil rights, poverty and health care, welfare reform, immigrant use of health care services, and managed care. (MSE)

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Return: Race, Health Care and the Law

WHAT IS THE IMPACT OF ENGLISH-ONLY AND NEW IMMIGRATION LAWS ON NON-ENGLISH SPEAKING PATIENTS?

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Annotated Bibliography

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Spring 1997

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This annotated bibliography is an effort to evaluate the communication between patients and their health care providers. Effective communication is necessary not only for quality care, but also for access to care. English-Only laws have been passed in various states. How have these laws affected the health care that immigrants who do not speak English receive? How has the movement of English-Only laws affected, if at all, immigration policies in conjunction with health care? Is the alleged discrimination of immigrant patients a result of pure immigration law or of discrimination based on some ideal of superiority of the English language? Why should effective communication be barred when it is essential for quality care?

The articles in this annotated bibliography are not limited to English-Only laws nor to English-Only laws in health care. To understand the general bias against those who do not speak English, I have chosen to include some immigration restrictions in the availability of care. English-Only laws and their impact on health care quality and availability to immigrants and to non-English speaking patients is a rather recent and growing field in health care; therefore, it is recommended that the reader maintain a constant updating of the changes in law and changes in attitude in the legislature and among the people of this nation.

The following articles are included in this bibliography:

'I Don't Know What I Could Do For My Mother Now' Welfare: Illegal Immigrants Face Eviction From Nursing Homes

42 USCA Section 2000d

Access to Health Care and the Undocumented Alien

Care for Disabled Illegal Immigrants Periled Health: Due to Federal Welfare Reform Bill, State is Set to Cut Off Government Aid For These Nursing Home Patients in 30 to 60 Days

Does Clinton's Health Care Reform Proposal Ensured [E]qual[ity] of Health Care For Ethnic Americans and the Poor?

English Only Laws and Direct Legislation: The Battle in the States Over Language Minority Rights

English-Only Laws, Informational Interests, and the Meaning of the First Amendment in a Pluralistic Society

Ensuring Effective communication: The Duty of Health Care Providers to Supply Sign Language

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Interpreters For Deaf Patients

Ethnicity and Attitude toward Patient Autonomy

Florida's Official English Amendment

Health Care Curbs Softened in Immigration Compromise

Healthtrends

Hispanics, Health Care, and Title VI of the Civil Rights Act of 1964

LA Ahead of the Curve the Great Social Laboratory with a Vast Immigrant and Poor Population, LA County Faces as Severe a Test Under Welfare Reform as any Place in the U.S. Both Newcomers and People Already Here-- even legally--are Affected

Nationwide Study of Health and Coping Among Immigrant Children and Families

Question: Who Pays for the Immigrant Services?

Reinvigorating Title VI: Defending Health Care Discrimination --It Shouldn't Be Easy

Services Not Key For Latinas in U.S. Illegally, Study Shows Immigrants: Few Rely on Public Assistance, and Most Are Here to Stay

The Impact of Managed Care on Doctors Who Serve Poor and Minority Patients

Under New Law, Nursing Homes May Reject Legal Immigrants / / IMMIGRATION: Patients Who Have Never Become Citizens May Face the Loss of Care--and a Place to Live

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Send questions and comments to:

Vernellia R. Randall
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since February 05, 1998.

ANNOTATIONS

Dave Lesher; Dan Morain, Care for Disabled Illegal Immigrants Periled Health: due to Federal Welfare Reform Bill, State is Set to Cut Off Government Aid For These Nursing Home Patients in 30 to 60 Days. Wilson Aides Hope to Find Alternative Public or Private Funding, Los Angeles Times, Sept. 4, 1996.

About 200 illegal immigrants lost their nursing home care because of the new welfare reform. Governor Wilson tried to protect his reputation by trying to provide for these elderly immigrants. However, Wilson's plans backfired because of Proposition 187. The other alternative the Governor proposed was to have the

nursing homes absorb the cost. If not, then he suggested that these immigrants be transferred to public hospitals as emergency cases because the welfare reform did not eliminate emergency services. It is ironic that the one bill that the Governor proposed and signed is the very bill that was a barrier to helping the immigrants. [Back]

Donna M. Greenspan, Florida's Official English Amendment, 18 Nova L. Rev. 891, (1994).

Greenspan's article assists the reader in understanding what a state's English-only law is like and what the implications are by providing a historical background of the passing of the amendment. Florida passed such an Amendment in 1988 with an overwhelming majority; however, it has not been enforce. As a matter of fact, the unenforcement is such that Dade County repealed is 1980 English-only ordinance. Florida's English-only Amendment was found constitutional, passing the strict scrutiny test because it "lacks the requirement of de jure discrimination." The author, however, points out that despite its constitutionality, the Florida English-only Amendment may cause serious problems in enforcement. Some of the possible problems may conflict with the Equal Protection provision of the 14th Amendment, the First, Amendment, the 1964 Civil Rights Act, an the 1965 Voting Rights Act. [Back]

Elizabeth Ellen Chilton, Ensuring Effective Communication: The Duty of Health Care Providers to Supply Sign Language Interpreters For Deaf Patients, 47 Hastings L.J. 871, (1996).

Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act "require recipients of federal funds and operators of public accommodations to ensure 'effective communication' with those whom they serve by providing appropriate auxiliary aids and services, including qualified sign language interpreters, to individuals with hearing impairments." Even though this article does not deal with Spanish-speaking or Chinese-speaking patients, but deals with patients who "speak" American Sign Language, this article is valuable for its in-depth look of the effect on health care that inadequate communication may have. Like the deaf, Non-English speaking patients should be able to have interpreters available to them because their quality of care is similarly impacted. Effective communication is key, regardless of the language that constitutes the barrier to that communication. [Back]

Eric Bailey, Services Not Key For Latinas in U.S. Illegally, Study Shows Immigrants: Few Rely on Public Assistance, and Most Are Here to Stay. Proposition 187

This is a very interesting article of it dissipates the myth that illegal immigrants are coming to the \united States because of the subsidized social services. The UC Irvine study has found that the "use of public assistance ad preventive health services was low. Furthermore, the study exposes indirectly the antagonist attitude toward non-English speaking people as evidence by the following quotes by Ezell who tries to discredit the UC Irvine study. Ezell says that Leo Chavez, who conducted the study "has obviously never been to any of the emergency rooms in Orange County to see who's using them--it's non-English-speaking young people with babies." He further "added that if illegal immigrants 'really want to feel part of the community, they ought to learn to speak English." Ironically, the research showed that only 18% of undocumented Latinas use government-sponsored medical program and that 84% of them said "they felt part of a community in the United States." Finally, "those with a regular source of health care were 65% less likely than those without it to intend to stay, a finding Chavez said might reflect a dissatisfaction with the quality of care, language difficulties and uncovered costs that prove a financial frustration." Once again, this is an article that indicates that English-only laws would be a disservice to this country as a whole. [Back]

Health Care Curbs Softened in Immigration Compromise, Health Legis. & Reg. Wkly. (Pg. Unavail. Online), Oct. 2, 1996.

It is not enough for Government to take basically all of the benefits from illegal immigrants. Now, the Government, through "a sweeping immigration policy overhaul" which became law as of September 30, 1996 as "part of the FY 97 omnibus spending bill" is also taking away benefits from legal immigrants. As proposed, the bill was to apply retroactively and not allow for costs to be picked up by Medicaid if treatment and testing was done for conditions related to AIDS. Although the final bill reached a compromise which did away with the retroactivity aspect and with the non-payment of AIDS related treatment and testing, legal immigrants are openly being discriminated against. It is my personal belief that this discrimination cannot be based on anything but language, because working legal immigrants pay taxes just like "normal Americans," if not more; they should be entitled to the same benefits. [Back]

Joseph Perkins, Question: Who Pays for the Immigrant Services? The San Diego Union- Tribune, Sept. 6, 1996.

Californians have subsidized their state's 2 million illegal immigrants are looking forward to be relieved of this burden by the welfare system reform. According to the reform, "illegals living within California's borders may no longer receive taxpayer-subsidized welfare benefits, college aid, nonemergency health care, retirement benefits, public-housing assistance, unemployment checks, food, stamps, disability payments, government grants, contracts and loans, and professional and commercial licenses." Is this just a political move by the legislature or is it open discrimination with the stamp of approval of the President and the Courts? This particular reform is limited to illegal immigrants; however, although illegal, they are still human beings. If one believes in natural law and the inherent rights of the human being, whether one is illegal or not, whether one speaks English or not, he or she should be able to have at a minimum access to health care. By cutting back on these services, America is showing its discriminatory side just to put a few extra dollars in the pockets of those who can already afford to work and to have access to care. [Back]

Leslie J. Blackhall, et al, Ethnicity and Attitude toward Patient Autonomy, JAMA, Vol. 274, No. 10 (1995).

As this article demonstrates, language alone is not the only barrier to access and quality of health care. Western medical and bioethical communities reflect a cultural bias for they do not take into consideration other values and cultures. This article is a research which surveys "800 Korean-American, Mexican-American, African-American, and white (European-American) subjects as a part of a larger study examining the attitude of older American of varying ethnicities toward health care and medical decision making." This article is a true eye-opener. Most of us take so many things for granted that we are not aware that what we do and expect to have done under the umbrella of quality health care may be more damaging than beneficial to ethnic patients. [Back]

Lynne Lamberg, Nationwide Study of Health and Coping Among Immigrant Children and Families, JAMA, Vol. 276, NO. 18, (1996).

Each year the United Sates receives "about 800,000 legal immigrants and perhaps 300,000 illegal immigrants." Many of these immigrants undoubtedly have children who need to learn English, go to schools, be immunized, and receive other general health care services. "Newcomers must learn how to communicate with an alien culture, and the alien culture also must learn their ways." In New York alone, "more than 100 languages are spoken by children in the school systems." With this vast diversity of culture and language, one can conclude that English-only laws are not the solution to the health and educational

needs of these immigrant children. Besides the language problem, the author mentions that a barrier to the well being of these immigrant children is the warfare among agencies. He advocates an "integrated system of care for all American children, only some of whom are immigrants." [Back]

Martina Stewart, English-Only Laws, Informational Interests, and the Meaning of the First Amendment in a Pluralistic Society, 31 Harv. C.R.-C.L. L. Rev. 539, (1996).

Proponents of English-only laws have been heard saying that "[n]o one is asking anyone to give up their heritage, just to respect the language and culture of the host country to accompany their voluntary decision to become a part of it." On its face, it seems like a logical and reasonable statement, but its underlying message is one that may be violative of Equal Protection.

The article by Stewart analyzes the Court's handling of the case of Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995) (en banc), cert granted, 113 S. Ct. 1316 (1996). In this case, Yniguez, a bilingual employee for the Arizona Department of Administrations, stopped servicing her Spanish-speaking clients in Spanish because of the English-only law that had recently been passed; she feared being disciplined. She sued on First Amendment ground and won. The Ninth circuit found the law facially broad and violative of the First Amendment. Although Equal Protection was not directly addressed by either the plaintiff or the court, that issue is nonetheless addressed implicitly. Stewart also analyzes six other opinions which resulted from the First Amendment issue. [Back]

Michele Arington, English Only Laws and Direct Legislation: The Battle in the States Over Language Minority Rights, 7 J.L. & Pol. 325, (1991).

English-Only Laws have gained much popularity in the last decade. Some say they are merely an attempt to maintain linguistic unity in this country. An English Language Amendment has been proposed but has been rejected, so where the English-Only Laws exist, they exist as a result of efforts by the states and municipalities. Critics of these laws are afraid that they may threaten the rights of certain minority groups because "language proficiency might be used as a precondition to the enjoyment of many benefits and rights under the law."

These laws have touched areas such as voting rights, education, employment, equal protection, and the first amendment. The author does not discuss what effect these English-Only Laws would have in the health care field, but the reader may rest assured that Non-English speaking patients do not to wait for a law to suffer the impact of the effects of English-Only practice which certainly already exists. [Back]

Note, The Impact of Managed Care on Doctors Who Serve Poor and Minority Patients, 108 Harv. L. Rev. 1625, (1995).

This Note shows how affecting access to health care to immigrants affects more than a governor's re-election campaign and the immigrants dire plight. Doctors who serve poor and minority patients are also being affected by legislation that undermines the infra-structure for the poor and minority. Now, instead of Medicaid being the culprit of the problem, the restructuring of "the health care industry toward managed care" is putting a strain on doctors who serve the population unable to pay, to communicate, to have access, and ultimately to have their needs meet.

This Note shows not only how managed care is excluding provider who serve poor communities, but it also shows what impact this exclusion has. It further attempts to analyze how the legislature is responding to this problem. [Back]

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Patrick J. McDonnell, 'I Don't Know What I Could Do For My Mother Now' Welfare: Illegal Immigrants Face Eviction From Nursing Homes, Los Angeles Times, Sept. 15, 1996.

Eviction of illegal immigrants from nursing homes due to Medicaid cuts is affecting not only the elderly immigrants who are being evicted but is having a ripple effect and affecting the nursing homes and the families of these immigrants. First, the nursing homes will lose the revenue from the Medicaid funds, and, as if that were not enough, they may have to absorb the cost of having these illegal immigrants as nursing home residents. Second, the families of these illegal immigrants, are not necessarily illegal themselves and are suffering the discrimination themselves. Besides, if the nursing homes do not take on the cost, many of these families will probably lose all of their assets by paying for nursing home treatment for family members on the verge of being evicted. What aggravates the situation is that "many of the relatives are unaware of their rights. Language difficulties and a lack of understanding of the details of benefits law compound matters." [Back]

Patrick McDonnell, LA Ahead of the Curve the Great Social Laboratory with a Vast Immigrant and Poor Population, LA County Faces as Severe a Test Under Welfare Reform as any Place in the U.S. Both Newcomers and People Already Here--even legally--are Affected, Los Angeles Times, Dec. 10, 1996.

Like his article above, McDonnell discusses the effects of the new welfare reform bill. However, in this article, his specific focus is on Los Angeles County. It seems that by eliminating assistance to immigrants, the government is shooting itself on the foot as this article shows that Los Angeles County alone stands to lose $532 million in revenue as a result of the "termination of SSI/SSP payments and food stamps for legal immigrants." [Back]

Raphael Metzger, Hispanics, Health Care, and Title VI of the Civil Rights Act of 1964, 3-WTR Kan. J.L. & Pub. Pol'y 31, (1993/1994).

Metzger's law review article is an excellent, detailed, on-point analysis of how language and culture affect the quality and access of health care for the growing Hispanic population in the United States. Metzger provides several interesting statistics, and he also shows that there is a direct link between the poor health status of Hispanics and the barrier "that are related to language use and culture." In his study of Title VI of the Civil Rights Act of 1964, Metzger becomes a strong advocate and believer that Title VI indeed "compels linguistic and/or cultural accommodation for a significant number of Hispanic health care consumers." [Back]

Robert Pear, Under New Law, Nursing Homes May Reject Legal Immigrants / IMMIGRATION: Patients Who Have Never Become Citizens May Face the Loss of Care--and a Place to Live, The Orange County Register, Oct. 13, 1996.

"The federal government and the states share the cost of Medicaid." President Clinton's signing of the welfare reform bill is removing its share of the costs. So, now, the states see themselves faced with the burden of picking up the federal government's slacks. This open discrimination against immigrants is simply a game of shifting the cost. States have limited budgets and some discretion, but their resources are definitely not infinite. Some of the nursing homes that are being affected by this cut in Medicaid funds will lose much of its business. As William J. Pascocello, and administrator for the Nightingale Health Center in New York City stated that Nightingale has "a whole floor of Chinese-speaking residents." As the reader can see, the ramifications of cutting Medicaid funds to immigrants, whether legal or not, are numerous. They affect the whole floors of nursing homes, whole groups of non-English speaking people, and so on.

This also affects access to care because according to Edward J. Stafford, executive director of the new York State Health Facilities Association, "Nursing homes right now are very hesitant to admit anyone if they're not sure he or she is a U.S. citizen." [Back]

Robin Elizabeth Margolis, Healthtrends, 11 No.1 HealthSpan 25, (1994).

Healthtrends provides reviews of recent health care studies. At the release of this article in 1994, the Hispanic population constituted 9% of the U.S. population, totaling 22 million people. But in the year 2010, it is estimated that Hispanics will be the largest ethnic group in America. Only 32% of Hispanics do not have any health insurance. This growth of the Hispanic population will definitely affect the budge due to non-insurance, but it will also severely affect providers who will have to learn how "to speak Spanish, ad be sensitive to cultural nuances that often lead to misunderstanding between patients and the health care system." [Back]

Sana Loue, Access to Health Care and the Undocumented Alien, 13 J. Legal Med. 271, (1992).

Loue examines the problem of access to health care for undocumented aliens from an outsiders' point-of-view. She analyzes the undocumented alien community, the availability of care, the need for care, current mechanisms to obtain care, and barriers to care. To assist her in her research, Loue used a group of HIV infected undocumented individuals as a case study. In her article, she includes suggestions on how to remedy the current situation and possible alternatives. It was interesting to learn that almost half of all the immigrant population lives in California, with New York, Texas, Illinois, and Florida sharing the other large portion of that burden. In her study, Loue notes that the "[p]ublic outcries regarding the widespread and voracious consumption of resources by undocumented aliens appear misplaced, in view of the substantial personal and systemic obstacles that hinder their access to care." This too, for me was something new, though not at all surprising and unexpected. [Back]

Sidney W. Watson, Reinvigorating Title VI: Defending Health Care Discrimination --It Shouldn't Be Easy, 58 Fordham L. Rev. 939, (1990).

This article discusses how Title VI of the 1964 Civil Rights Act was an effort on the part of government to prohibit "programs and activities that receive federal financial assistance from discriminating on the basis of race." The article, however, goes on to show that "[w]hile enactment of Title VI ended the most blatant forms of health care discrimination, subtle barriers still prevent minorities from gaining full access to federally funded hospitals and other health care facilities." This is a thorough article, for its analysis begins with the development of Title VI, its implementation, the Supreme Court's involvement, and its connection to Title VII. [Back]

Vernellia R. Randall, Does Clinton's Health Care Reform Proposal Ensured [E]qual[ity] of Health Care For Ethnic Americans and the Poor? 60 Brook. L. Rev. 167, (1994).

I have chosen to include this article in the annotated bibliography because ethnic Americans and the poor group may very well be made up of at least a few hundred thousand legal and illegal immigrants who do not speak English. Professor Randall, in her law review article, makes a thorough evaluation of the Health Security Act, its flaws, and its perpetuation of discrimination in the health care field. Against popular belief, economic access is not the only barrier to health care, according to Randall. The Health Security

Act, even though it attempts to address many of the current problems, is inadequate in achieving its goals and becomes itself another barrier to access and quality health care to all human beings, irrespective of color, race, language, or nationality. [Back]

42 USCA Section 2000d

The few lines which make-up this section simply read: "§ 2000d. Prohibition against exclusion from participation in, denial of benefits of , and discrimination under Federally assisted programs on ground of race, color, or national origin: No person in the United States shall, on the ground of race, color, or national origin, be excluded form participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This section is added to this annotated bibliography to stimulate the reader to further research the implications of this section in conjunction with the new welfare reform bill and legislations such as proposition 187. [Back]

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